

SEP 18 1978

In The  
**Supreme Court of The United States**

MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1978

No. 78-78

MARVIN E. SINGLETON, JR. AND  
GERTRUDE R. SINGLETON,

*Petitioners.*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

---

**REPLY MEMORANDUM FOR THE PETITIONERS**

---

ANDERSON WALLACE, JR.  
F<sup>¶</sup>  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National  
Bank Building  
Dallas, Texas 75202

Counsel for Petitioner

September, 1978

---

---

In the  
**Supreme Court of the United States**

OCTOBER TERM, 1978

---

No. 78-78

**MARVIN E. SINGLETON, JR. AND  
GERTRUDE R. SINGLETON,**

*Petitioners,*

vs.

**COMMISSIONER OF INTERNAL REVENUE**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

---

**REPLY MEMORANDUM FOR THE PETITIONERS**

---

This reply to the Government's Memorandum In Opposition is filed because the Government has failed to face the important issue of federal income tax administration presented by the decision below. The Government has instead based its argument on its newly-raised assertion that the resolution of the "form vs. substance" issue in this case is controlled by *Commissioner v. National Alfalfa Dehydrating & Milling Co.*, 417 U.S. 134 (1974).

*National Alfalfa* dealt with a situation where a taxpayer urged the Supreme Court to look to what the taxpayer termed the "economic realities" of the transaction in question. The taxpayer thus asked the Court to speculate on the tax effect of a hypothetical transaction which the taxpayer argued could have been substituted for what actually took place.

Petitioners would urge this Court that the Government's reliance on *National Alfalfa* demonstrates the importance of granting the Writ of Certiorari. Petitioners do not believe that Mr. Justice Blackmun, writing for the Court in *National Alfalfa*, intended to overrule all of the hundreds of cases which have held that a taxpayer as well as the Government may argue the primacy of substance over form without his ever using the terms "form" or "substance" or without making reference to any of the Supreme Court authorities which consider the "form vs. substance" question.<sup>1</sup>

---

<sup>1</sup>This apparent Government misunderstanding of the holding in *National Alfalfa* would appear to explain the curious footnote in the Memorandum In Opposition (ftn. 3 at page 6) in which the Government seems to suggest that *National Alfalfa* overruled some, but not all, of the cases which have held that a taxpayer, as well as the Government, may assert the primacy of substance. *Helvering v. Lazarus & Co.*, 308 U.S. 252, clearly stands for the proposition that a taxpayer may assert the primacy of substance over form. This court cited *Helvering v. Lazarus & Co.* in its discussion of "form vs. substance" in *Frank Lyon Company v. United States*, 98 S.Ct. 1291, 1298.

To argue that a particular transaction should be characterized for federal income tax purposes in a particular manner because of its substance, not because of the labels applied, is not to argue (as did the taxpayer in *National Alfalfa*) that a taxpayer may rebut clear substance by asking the court to speculate as to what he might have done differently, i.e., an alleged "economic equivalence" of a different substance which carries a different tax treatment.

In order to provide badly needed clarity in this important area of tax administration, the Court should grant the Writ of Certiorari.

Respectfully submitted,

Anderson Wallace, Jr.  
Jackson, Walker, Winstead,  
Cantwell & Miller  
4300 First National  
Bank Building  
Dallas, Texas 75202

September, 1978